



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 8 6 2014

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Michael S. Kelley
Senior Attorney
333 Clay St. Suite 1600
Houston, TX 77002

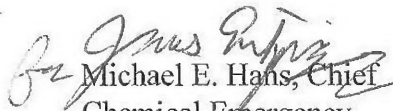
Re: **Plaines LPG Services, L.P., Alto, Michigan**
Consent Agreement and Final Order
Docket No. CAA-05-2014-0037

Dear Mr. Kelley,

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. U.S. EPA has filed the original CAFO with the Regional Hearing Clerk on August 1, 2014. Please inform your client of their obligation to pay a civil penalty in the amount of \$74,000 in the manner prescribed in paragraphs 36-41 and please note that your client must reference their check with the docket number.

Please feel free to contact Monika Chrzaszcz at (312) 886-0181 if you have any questions regarding the enclosed documents. Please direct any legal questions to Cynthia Kawakami, Regional Counsel, at (312) 886-0564. Thank you for your assistance in resolving this matter.

Sincerely yours,


Michael E. Hans, Chief
Chemical Emergency
Preparedness & Prevention Section

Enclosure

cc. Cynthia Kawakami, ORC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

Plains LPG Services, L.P.
Alto, Michigan



Proceeding to Assess a Civil Penalty
Under Section 113(d) of the Clean Air
Act, 42 U.S.C. § 7413(d)

Respondent.

Docket No. CAA-05-2014-0037

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d), and Sections 22.1(a)(2), 22.13(b), and 22.18(b)(2) and (3) of the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* (Consolidated Rules), as codified at 40 C.F.R. Part 22, for violations of Section 112(r) of the Act, 42 U.S.C. § 7412(r), and the implementing regulations.

2. Complainant is the Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. Respondent, Plains LPG Services, L.P. (Respondent), is a Texas limited partnership doing business in the State of Michigan.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a consent agreement and final order (CAFO). 40 C.F.R. § 22.13(b).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. In order to resolve this matter without litigation, Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in the CAFO.

8. Respondent waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 112(r)(1) of the Act, 42 U.S.C. § 7412(r)(1), provides that it shall be the objective of the regulations and programs authorized under this subsection to prevent the accidental release and to minimize the consequences of any such release of any substance listed pursuant to Section 112(r)(3), or any other extremely hazardous substance.

10. Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), provides that the Administrator shall promulgate, not later than 24 months after November 15, 1990, an initial list of 100 substances which, in the case of an accidental release, are known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment.

11. Section 112(r)(7)(A) of the Act, 42 U.S.C. § 7412(r)(7)(A), provides that in order to prevent accidental releases of regulated substances, the Administrator is authorized to promulgate release prevention, detection, and correction requirements which may include

monitoring, record-keeping, reporting, training, vapor recovery, secondary containment, and other design, equipment, work practice, and operational requirements.

12. Section 112(r)(7)(B)(i) of the Act, 42 U.S.C. § 7412(r)(7)(B)(i), provides that within 3 years after November 15, 1990, the Administrator shall promulgate reasonable regulations and appropriate guidance to provide, to the greatest extent practicable, for the prevention and detection of accidental releases of regulated substances and for response to such releases by the owners or operators of the sources of such releases.

13. Section 112(r)(7)(B)(ii) of the Act, 42 U.S.C. § 7412(r)(7)(B)(ii), provides that the regulations under this subparagraph shall require the owner or operator of stationary sources at which a regulated substance is present in more than a threshold quantity to prepare and implement a Risk Management Plan to detect and prevent or minimize accidental releases of such substances from the stationary source, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

14. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator initially promulgated a list of regulated substances, with threshold quantities for applicability, at 59 Fed. Reg. 4478 (January 31, 1994), which have since been codified, as amended, at 40 C.F.R. § 68.130.

15. Under Section 112(r) of the Act, 42 U.S.C. § 7412(r), the Administrator promulgated “Accidental Release Prevention Requirements: Risk Management Programs Under Clean Air Act Section 112(r)(7),” 61 Fed. Reg. 31668 (June 20, 1996), which were codified, and amended, at 40 C.F.R. Part 68: Chemical Accident Prevention Provisions (Risk Management Program Regulations).

16. “Stationary source” is defined to mean “any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.” 40 C.F.R. § 68.3.

17. “Process” is defined to mean “any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities.” 40 C.F.R. § 68.3.

18. Under Section 112(r)(3) of the Act, 42 U.S.C. § 7412(r)(3), the Administrator has listed ammonia (CAS No. 7664-41-7) as a substance which, in the case of an accidental release, is known to cause or may reasonably be anticipated to cause death, injury, or serious adverse effects to human health or the environment. The Administrator has further identified a threshold quantity of 10,000 lbs. for ammonia (CAS No. 7664-41-7) for determining whether sources are subject to the Risk Management Program. 40 C.F.R. § 68.130, Tables 1 and 2.

19. 40 C.F.R. § 68.115 provides that a “threshold quantity of a regulated substance listed in 40 C.F.R. § 68.130 is present at a stationary source if the total quantity of the regulated substance contained in a process exceeds the threshold.”

20. 40 C.F.R. § 68.12 requires that the owner or operator of a stationary source subject to 40 C.F.R. Part 68 shall submit a single Risk Management Plan, as provided in 40 C.F.R. §§68.150 through 68.185.

21. 40 C.F.R. § 68.12(d) requires that, in addition to meeting the general requirements of 40 C.F.R. § 68.12(a), the owner or operator of a stationary source with a process subject to Program 3 shall meet additional requirements identified at 40 C.F.R. § 68.12(d).

22. Section 113(d) of the Act, 42 U.S.C. § 7413(d), and 40 C.F.R. Part 19 provide that the Administrator of the U.S. EPA may assess a civil penalty of up to \$32,500 per day of violation up to a total of \$270,000 for each violation of Section 112(r) of the Act that occurred from March 15, 2004 to January 12, 2009 and a civil penalty of up to \$37,500 per day of violation up to a total of \$295,000 for each violation of Section 112(r) of the Act that occurred after January 12, 2009 and before December 6, 2013 and a civil penalty of up to \$37,500 per day of violation up to a total of \$320,000 for each violation of Section 112(r) of the Act that occurred after December 6, 2013.

23. Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(r) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and the Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action. Here, on October 18, 2013, U.S. EPA and the United States Department of Justice waived the provision in 42 U.S.C. § 7413(d) that involves alleged violations that occurred more than one year before the initiation of a proceeding, and determined that this matter is appropriate for an administrative penalty assessment.

Factual Allegations and Alleged Violations

24. Respondent is a "person," as defined at Section 302(e) of the Act, 42 U.S.C. § 7602(e).

25. Respondent owns and operates a liquefied petroleum gas manufacturing and storage facility located at 6050 Alden Nash Avenue, Alto, Michigan, that consists of buildings, equipment, structures, and other stationary items which are located on a single site or on

contiguous or adjacent sites (Respondent's Facility or the Facility).

26. On January 26, 2005, under Section 112(r) of the Act, 42 U.S.C. § 7412, and implementing regulations, 40 C.F.R. Part 68, Respondent submitted to U.S. EPA a Risk Management Plan (RMP) for its Facility.

27. According to the RMP submitted to U.S. EPA by Respondent, Respondent's Facility:

- a. fell within NAICS Code 42471, as "Petroleum Bulk Station and Terminals;"
- b. used butane (CAS No. 106-97-8) and propane (CAS No. 74-98-6) as process chemicals during its operations; and,
- c. held at least 10,000 lbs. of butane (CAS No. 106-97-8) and propane (CAS No. 74-98-6).

28. On July 5, 2012, authorized representatives of U.S. EPA conducted an inspection at Respondent's Facility to determine its compliance with 40 C.F.R. Part 68.

29. Respondent's Facility is a "stationary source," as defined at 40 C.F.R. § 68.3.

30. On January 26, 2005, Respondent held 10,000 lbs. or more of butane and propane for use in its operations at its Facility and, thus, exceeded the applicability threshold established by 40 C.F.R. § 68.130, and became subject to 40 C.F.R. Part 68.

31. For purposes of compliance with 40 C.F.R. Part 68, Respondent acknowledged in its RMP, that its Facility was required to meet Program 3 eligibility requirements.

32. Based on U.S. EPA's inspection of Respondent's Facility conducted on June 5, 2012, and a review of Respondent's additional information received by U.S. EPA subsequent to that date, U.S. EPA alleged that Respondent violated the Hazard Assessment and Program 3 Prevention Program regulations as follows:

- a. Failing to analyze and report the worst-case release scenario that is estimated to create the greatest distance in any direction to an endpoint as defined in § 68.22 (a) resulting from an accidental release of a regulated flammable substance from the covered process under worst-case conditions defined in § 68.22(a), as required under 40 C.F.R. § 68.25(a)(2)(ii);
- b. Failing to determine the worst-case release quantity that is, for substances in a vessel, the greatest amount held in a single vessel, taking into account administrative controls that limit the maximum quantity, as required under 40 C.F.R. § 68.25(b)(1);
- c. Failing to compile written process safety information including information pertaining to the technology of the process that includes maximum intended inventories, as required under 40 C.F.R. § 68.65(c)(1)(iii);
- d. Failing to compile written process safety information including information that documents that equipment complies with recognized and generally accepted good engineering practices, as required under 40 C.F.R. § 68.65(d)(2);
- e. Failing to perform a process hazard analysis that addresses the hazards of the process, including those relating to flares, the identification of any previous incident which had a likely potential for catastrophic consequences, stationary source siting, and human factors as required under 40 C.F.R. § 68.67(c);
- f. Failing to correct deficiencies in equipment that are outside acceptable limits before further use or in a safe and timely manner when necessary means are taken to assure safe operation, as required under 40 C.F.R. § 68.73(e); and
- g. Failing to promptly determine and document an appropriate response to each of the findings of the compliance audit and document that deficiencies have been corrected, as required under 40 C.F.R. § 68.79(d).

33. Section 112(r)(7)(E) of the Act, 42 U.S.C. § 7412(r)(7)(E), provides that after the effective date of any regulation or requirement promulgated pursuant to Section 112(r) of the Act, it shall be unlawful for any person to operate any stationary source in violation of such regulation or requirement.

34. Accordingly, the above-described violations of 40 C.F.R. Part 68 and Section 112(r) of the Act are subject to the assessment of a civil penalty under Section 113(d) of the Act, 42 U.S.C. § 7413(d).

35. Pursuant to Section 113(d)(1) of the Act, the Administrator and the Attorney General of the United States, each through their respective delegates, jointly determined that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

Civil Penalty

36. Based on an analysis of the factors specified in Section 113(e) of the Act, 42 U.S.C. § 7413(e), the facts of this case, and other factors such as cooperation and prompt compliance, Complainant has determined that an appropriate civil penalty to settle this action is \$74,000.

37. Within 30 days after the effective date of this CAFO, Respondent must pay the \$74,000 civil penalty by sending a cashier's or certified check, by regular U.S. Postal Service mail, payable to the "Treasurer, United States of America," to:

U.S. EPA
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note "Plains LPG Services, L.P." and the docket number of this CAFO.

38. A transmittal letter stating Respondent's name, complete address, and the case docket number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Attn: Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Monika Chrzaszcz (SC-5J)
Chemical Emergency Preparedness and Prevention Section
Superfund Division
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

Cynthia Kawakami, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

39. This civil penalty is not deductible for federal tax purposes.

40. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.

41. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5). This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

General Provisions

42. This CAFO resolves Respondent's liability only for federal civil penalties for the violations alleged in this CAFO.

43. The CAFO does not affect the right of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

44. This CAFO does not affect Respondent's responsibility to comply with the Act

and other applicable federal, state, and local laws. Except as provided in paragraph 42, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by Complainant.

45. Respondent certifies that to the best of its knowledge it is complying with 40 C.F.R. Part 68.

46. The terms of this CAFO bind Respondent, its successors, and assigns.

47. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

48. Each party agrees to bear its own costs and attorneys' fees in this action.

49. This CAFO constitutes the entire agreement between the parties.

50. The effective date of this CAFO is the date when this CAFO is filed with the Regional Hearing Clerk's office.

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of Plains LPG Services, L.P.
Docket No.

Plains LPG Services, L.P., Respondent

Date: 7/10/2014

By: Troy E. Valenzuela *MEK*
Troy E. Valenzuela
Vice President – Environmental Health &
Safety

United States Environmental Protection Agency, Complainant

Date: 7/22/2014

By: Richard C. Karl
Richard C. Karl, Director
for Superfund Division

CONSENT AGREEMENT AND FINAL ORDER


In the Matter of Plains LPG Services, L.P.

Docket No. CAA-05-2014-0037

Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

7-28-2014
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

CONSENT AGREEMENT AND FINAL ORDER

In the Matter of Plains LPG Services, L.P.

Docket No. CAA-05-2014-0037

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U.S. Environmental Protection Agency, Region 5 77 W. Jackson Boulevard, Chicago, Illinois 60604, and that I mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:


Michael S. Kelley
Senior Attorney
333 Clay Street, Suite 1600
Houston, TX 77002

Electronic copy sent to:

Monika Chrzaszcz
U.S. EPA, Region 5

Cynthia Kawakami,
U.S. EPA, Region 5

Dated this 1st day of August, 2014.


Jarrah P. Sanders
U.S. Environmental Protection Agency
Region 5